

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA

UNITED STATES OF AMERICA )  
                                )  
                                )  
                                )  
v.                             )                              No. 1:04-cr-92  
                                )                              Chief Judge Curtis L. Collier  
                                )  
MICHAEL JOHNSON            )

**O R D E R**

Defendant Michael Johnson (“Defendant”) filed a motion for a mental and physical evaluation in preparation for his sentencing hearing (Court File No. 91). The motion was referred to United States Magistrate Judge William B. Carter to conduct an evidentiary hearing and make a report and recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). The Court entered an order on July 28, 2005<sup>1</sup> granting a psychiatric/medical evaluation to determine: “(1) whether the defendant is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to assist properly in his defense at the sentencing phase of the trial; and (2) whether the defendant suffers from severe headaches and backache and whether or not Defendant can be treated for said ailments” (Court File No. 94).

The mental competency hearing was held on August 24, 2006. Dr. Karen Milliner, a Forensic Psychologist at the Federal Medical Center in Lexington, Kentucky, testified at the hearing, and a report dated October 27, 2005 was made an exhibit to the hearing under seal. The findings in the report are Defendant displayed a factual and rational understanding of the proceedings against

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<sup>1</sup>The R&R erroneously refers to this date as September 12, 2005. Upon review of the record, the Court notes this order was entered on July 28, 2005.

him and demonstrated sufficient present ability to consult with his attorney with a reasonable degree of rational understanding, and Defendant is not currently suffering from a mental disease or defect rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or properly assist in his defense. No evidence was presented by Defendant to contradict the findings in the report or the testimony of Dr. Milliner.

On the basis of Dr. Milliner's testimony and report, and after careful review of the pleadings and other medical evidence, Magistrate Judge Carter recommended the Court find Defendant competent to assist properly in his defense at the sentencing phase of this case. Defendant has filed no objections to the magistrate judge's R&R.

Therefore, the Court **ACCEPTS** and **ADOPTS** the magistrate judge's report and recommendation (Court File No. 128) pursuant to 28 U.S.C. § 636(b)(1)(C), and hereby **ORDERS** Defendant is competent to assist properly in his defense at the sentencing phase of this case.

**SO ORDERED.**

**ENTER:**

/s/  
**CURTIS L. COLLIER**  
**CHIEF UNITED STATES DISTRICT JUDGE**